

October 23, 2018

VIA ELECTRONIC FILING

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

**RE: Proceeding for Approval of the Public Utility Regulatory Policies Act of 1978
(PURPA) Avoided Cost Rates for Electric Companies
Docket No. 1995-1192-E**

Dear Ms. Boyd:

Duke Energy Carolinas, LLC (“DEC”) and Duke Energy Progress, LLC (“DEP”) (collectively, “Duke Energy” or the “Companies”) hereby submit this letter to provide notice to the Public Service Commission of South Carolina (the “Commission”) of the Memorandum of Understanding (“MOU”) entered into with the South Carolina Solar Business Alliance (“SCSBA”) to provide clarity to solar industry market participants and other qualifying facilities (“QF”) regarding the Companies’ planned implementation of the “30-month” availability provision contained in the Companies’ respective Schedules PP and PP-2 (“Schedule PP Tariffs”).¹ The Companies are filing the MOU with this letter. As a party to the MOU, SCSBA has authorized Duke Energy to represent that SCSBA has no objection to this filing.

The Schedule PP Tariffs set forth the rates, terms, and conditions by which the Companies purchase power from eligible QFs, pursuant to the Public Utility Regulatory Policies Act of 1978 (“PURPA”). The Schedule PP Tariffs became effective on July 1, 2016, and are scheduled to expire on January 1, 2019.² The “30-month” provision of the Schedule PP Tariffs, which is the subject of the MOU, requires eligible³ QFs to begin delivering power within 30 months from the effective date of the currently-approved Schedule PP Tariffs in order to retain the avoided cost rates set forth therein. Additionally, the Schedule PP Tariffs provide that a QF should be allowed additional time to begin delivering power beyond the 30-month period if the

¹ DEC Schedule PP (SC) and DEP Schedule PP-2 were approved by the Commission in Order No. 2016-349 issued on May 12, 2016 in the above-referenced docket

² The Companies intend to file updated Schedule PP Tariffs in their next avoided cost filing, no later than December 31, 2018.

³ An “eligible” QF is a QF that (1) is eligible for the Schedule PP Tariffs and (2) has established a legally enforceable obligation (“LEO”) prior to the Companies’ next avoided cost filing with the Commission.

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QF's project is nearly complete and the QF is making a good faith effort to complete the project in a timely manner. Specifically, the Schedule PP Tariffs provide, in pertinent part:

Schedule PP, Availability, at Paragraph 3:

The Fixed Long Term Credit rates on this schedule are available only to otherwise eligible Sellers that establish a Legally Enforceable Obligation on or before the filing date of proposed rates in the next avoided cost proceeding, provided eligible Seller begins delivery of power no later than thirty (30) months from the date of the order approving the avoided cost rates set forth below, but may be extended beyond 30 months if construction is nearly complete and Seller demonstrates that it is making a good faith effort to complete its project in a timely manner.

The purpose of the MOU is to provide additional clarity and certainty regarding the manner in which Duke Energy will interpret this Schedule PP Tariff language as January 1, 2019 approaches. Specifically, the MOU provides that Duke Energy will allow certain eligible QFs that have established a legally enforceable obligation ("LEO") with DEC or DEP and submitted an Interconnection Request on or before January 1, 2018 to satisfy the "nearly complete" and "proceeding in good faith" requirements of the Schedule PP Tariffs. The MOU sets forth the specific details and options available to QFs, as agreed upon by the Companies and SCSBA.

This letter is being filed for informational purposes only and is not intended to seek any Commission action. Please do not hesitate to contact me if you have any questions.

Sincerely,



Rebecca J. Dulin

cc: Parties of Record

Enclosure

Memorandum of Understanding between Duke Energy Carolinas, LLC, Duke Energy Progress, LLC, and South Carolina Solar Business Alliance Regarding Interpretation of Duke Energy's Schedule PP "30 Month" Availability Provision to Address Developer Concerns Regarding Standard Offer Rate Eligibility under Current Interconnection Processing Timeframes
Docket No. 1995-192-E

Based upon the current solar interconnection landscape and the status of the Companies' interconnection queues, Duke Energy Carolinas, LLC ("DEC"), Duke Energy Progress, LLC ("DEP" and together with DEC, "Duke Energy"), and the South Carolina Solar Business Alliance (collectively, the Parties") have entered into this Memorandum of Understanding ("MOU") to provide additional explanation of how Duke Energy intends to implement the "30 month" availability provision of the DEC and DEP Schedule PP Tariffs, which are scheduled to expire on January 1, 2019. The Parties hereby enter into the following MOU, dated August 30, 2018, and agree as follows:

The Schedule PP Tariffs provide, in pertinent part, as follows:

Schedule PP, Availability, at Paragraph 3:

The Fixed Long Term Credit rates on this schedule are available only to otherwise eligible Sellers that establish a Legally Enforceable Obligation on or before the filing date of proposed rates in the next avoided cost proceeding, provided eligible Seller begins delivery of power no later than thirty (30) months from the date of the order approving the avoided cost rates set forth below, but may be extended beyond 30 months if construction is nearly complete and Seller demonstrates that it is making a good faith effort to complete its project in a timely manner.

The 30 month period expires January 1, 2019. To address current circumstances, and not to be considered precedential in the future, Duke Energy agrees to interpret this Schedule PP Tariff language to allow QFs that have made a legally enforceable commitment to sell power ("LEO") to DEC or DEP and submitted an Interconnection Request on or before January 1, 2018¹, additional time beyond the 30 months referenced in the Schedule PP Tariffs to qualify for the current Schedule PP rates, terms and conditions, if the QF demonstrates, using the procedure described below, that the QF has made a binding commitment to construct the facility and that construction will be timely completed after interconnection facilities are provided by the Companies:

- **EPC Option:** A QF that has executed a Notice to Proceed ("NTP") to its Engineering, Procurement, and Construction contractor ("EPC") by January 1, 2019, may submit documentation demonstrating this NTP committing to construct

¹ January 1, 2018, is approximately 260 business days ahead of January 1, 2019, and reflects the timeframe that an Interconnection Request designated as a Project A or Project B could fully complete the SC GIP Interconnection Process absent ongoing challenges associated with managing the current volume of solar Interconnection Requests in the DEC and DEP queues.

the QF project and begin delivery of power (“EPC Commitment”); and complete the “Notice of Commitment to Construct” included in Attachment 1.

- Self-Build Option: A QF that is also the EPC (or affiliated with the EPC) for its project may, in lieu of executing and delivering an NTP as described above, complete and submit to Duke the “Notice of Commitment to Construct” included in Attachment 1 (“Self-Build Commitment”).

A QF that meets the above test and delivers an EPC Commitment or Self-Build Commitment (using the Notice of Commitment to Construct) to DEC or DEP, as appropriate, on or before January 1, 2019 will be deemed to satisfy the “nearly complete” and “proceeding in good faith” requirements of the Schedule PP Tariffs, even though the developer may not have commenced construction of the facility. Satisfaction of these requirements under the Schedule PP Tariffs will extend the deadline for eligibility under the current Schedule PP tariffs (which otherwise expires on January 1, 2019), as well as the deadline for commercial operation and the commencement date of the delivery period (“Initial Delivery Date”) under the Schedule PP purchased power agreement (“PPA”) term. A QF that meets these requirements shall commence or be deemed to have commenced delivery of power for purposes of establishing the Initial Delivery Date under the PPA no later than 60 calendar days from the date on which the utility provides written notice to the QF that construction of all interconnection facilities, distribution upgrades, and/or network upgrades specified in the QF’s Interconnection Agreement has been completed.²

A QF project that did not establish a LEO and submit an Interconnection Request on or before January 1, 2018, but that has established a LEO (and does not commence delivering power) prior to January 1, 2019, has the option of either: (a) having its project deemed to have begun its delivery period on January 1, 2019 (the date after the 30 month period has ended) and having its PPA term commence on that date; or (b) terminating its PPA (if applicable) and establishing a new LEO and PPA at then-available rates. If such a QF does not notify Duke in writing of its election on or before January 1, 2019, it shall be deemed to have selected option b (terminate PPA and establish a new LEO).

In order to provide reasonable notice of the Companies’ interpretation of the “30 month” availability provision of the Schedule PP Tariff, as discussed herein, DEC or DEP, as appropriate, will deliver this letter and Notice of Commitment to Construct form to each QF that has established a LEO under the current Schedule PP standard offer tariff at least forty-five (45) calendar days prior to the expiration of the 30-month period (*i.e.*, by November 17, 2018). **By January 1, 2019, each QF shall notify DEP or DEC, as appropriate, in writing which option it has selected, and shall provide any necessary supporting documentation as set forth herein (and provide the EPC Commitment or Self-Build Commitment, if applicable).** If Duke Energy determines that the QF has not met the documentation requirements set forth in this Proposal, DEC or DEP shall promptly notify the QF and provide a reasonable opportunity to

² For the avoidance of doubt, in the event that a QF that has previously met the LEO eligibility and Notice of Commitment to Construct requirements described above is unable to commence delivery of power by the 60th calendar day after the utility provides notice of completion of interconnection facilities/upgrades to the QF, the PPA shall not be terminated and the QF shall remain eligible for the Schedule PP Tariff. However, the QF will be deemed to have commenced delivery of power and the Initial Delivery Date of the PPA term will be the 60th calendar day after the utility provides notice of completion of interconnection facilities/upgrades to the QF.

correct such deficiency. An eligible QF that fails to provide notice to Duke Energy of its election through submission of the Notice of Commitment to Construct form on or before January 1, 2019, shall automatically be deemed to have its existing LEO and/or PPA terminated, and may elect to establish a LEO and enter into a new PPA under the standard-offer tariff available after January 1, 2019.

IN WITNESS WHEREOF, this MOU has been executed on the date first written above. Each Party acknowledges its consent and agreement to this MOU, by affixing its signature to this document where indicated below. Facsimile signatures and e-mail signatures shall be as effective as original signatures to bind any Party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this MOU.

Duke Energy Progress, LLC /
Duke Energy Carolinas, LLC

South Carolina Solar Business Alliance

By: 

By: _____

Gary R. Freeman,
General Manager, DER Compliance &
Origination

Brett Sowers
Chairman, SBA

correct such deficiency. An eligible QF that fails to provide notice to Duke Energy of its election through submission of the Notice of Commitment to Construct form on or before January 1, 2019, shall automatically be deemed to have its existing LEO and/or PPA terminated, and may elect to establish a LEO and enter into a new PPA under the standard-offer tariff available after January 1, 2019.

IN WITNESS WHEREOF, this MOU has been executed on the date first written above. Each Party acknowledges its consent and agreement to this MOU, by affixing its signature to this document where indicated below. Facsimile signatures and e-mail signatures shall be as effective as original signatures to bind any Party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this MOU.

Duke Energy Progress, LLC /
Duke Energy Carolinas, LLC

By: _____

Gary R. Freeman,
General Manager, DER Compliance &
Origination

South Carolina Solar Business Alliance

By: _____

Brett Sowers
Chairman, SBA

Attachment 1**NOTICE OF COMMITMENT TO CONSTRUCT QUALIFYING FACILITY
Duke Energy Carolinas, LLC or Duke Energy Progress, LLC**

Pursuant to the Memorandum of Understanding entered into between Duke Energy Carolinas, LLC's ("DEC") and Duke Energy Progress, LLC's ("DEP" and together with DEC, "Duke Energy") and the South Carolina Solar Business Alliance (collectively, the Parties"), dated August 30, 2018, which sets forth Duke Energy's planned approach to implementing the "30 month" availability provision of the DEC and DEP Schedule PP Tariffs, which are scheduled to expire on January 1, 2019 (the "MOU"), this Notice of Commitment to Construct form establishes the procedure for a Qualifying Facility ("QF") to make a binding commitment to construct the facility and timely complete construction of the facility after interconnection facilities are provided by the DEC or DEP (as applicable). As described in the MOU, a QF eligible for the current Schedule PP Tariffs and that has made a legally enforceable commitment to sell power ("LEO") to DEC or DEP and submitted an Interconnection Request on or before January 1, 2018, must deliver this Notice of Commitment to Construct form to DEC or DEP on or before January 1, 2019, or the QF shall automatically be deemed to have its existing legally enforceable obligation ("LEO") and/or power purchase agreement terminated, and, after such time, may elect to establish a LEO and enter into a new PPA under the standard-offer tariff available after January 1, 2019.

1. **Delivery; Notices to Company:** The QF shall deliver, via certified mail, courier, hand delivery or email, its executed Notice of Commitment to:

Duke Energy – Distributed Energy Technologies
400 South Tryon Street
Mail Code: ST 14A
Charlotte, North Carolina 28202
Attn.: Wholesale Renewable Manager
DERContracts@duke-energy.com

2. **Submittal Date.** The QF's delivery of this Notice of Commitment to Construct shall take effect on its "Submittal Date," which means (a) the receipted date of deposit of this Notice of Commitment with the U.S. Postal Service for certified mail delivery to the Company, (b) the receipted date of deposit of this Notice of Commitment with a third-party courier (e.g., Federal Express, United Parcel Service) for trackable delivery to the Company, (c) the receipted date of hand delivery of this Notice of Commitment to the Company at the address set forth in paragraph 1, above, or (d) the date on which an electronic copy of this Notice of Commitment is sent via email to the Company.

3. QF Information. The name, address, and contact information for the QF is:

Name: _____ Telephone: _____

Address: _____ Email: _____

Interconnection Queue Number: _____

LEO Date: _____

Interconnecting Utility: ☐ _____ Duke Energy Progress _____ Duke Energy Carolinas

4. Commitment to Construct. QF hereby commits to construct the generating facility and timely complete construction of the facility after all interconnection facilities are provided by Duke Energy, using one of the following options, as described in the MOU(check one):

a. _____ EPC Option: The QF has executed a Notice to Proceed (“NTP”) to its Engineering, Procurement, and Construction contractor (“EPC”) by January 1, 2019. The QF shall submit documentation demonstrating this NTP along with this Notice of Commitment to Construct.

b. _____ Self-Build Option: QF intends, or is affiliated with an entity that intends, to serve as the Engineering, Procurement, and Construction contractor (“EPC”) for the facility. The QF hereby certifies that it has made a binding commitment to construct the facility, and that construction will be timely completed after interconnection facilities are provided by the Duke Energy Progress or Duke Energy Carolinas (as applicable).

The undersigned is duly authorized to execute this Notice of Commitment to Construct for the QF:

[Name]

[Title]

[Company]

[Date]